UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,201	10/10/2003	Esmond Ho	15520-US-CONT	1251

23553   7590   07/31/2008

MARKS & CLERK
P.O. BOX 957
STATION B
OTTAWA, ON K1P 5S7
CANADA

EXAMINER
JAIN, RAJ K

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
07/31/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/682,201*	HO ET AL.
	Examiner	**Art Unit**	
	RAJ K. JAIN	2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>08 July 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

       NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-4*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See attached sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Chi H Pham/
Supervisory Patent Examiner, Art Unit 2616
7/29/08

Regarding claim 3, Kalampoukas discloses a method of providing feedback (via RM cells; col 5 line 9-14) about a contention point (Fig. 1, say switch 3) to a source (S1, S2 or S3) of a multicast connection from said source (say S3) to a plurality of different destinations (D2, D3 and D1), wherein at said contention point (say switch 3) the multicast connection splits into a plurality of streams directed toward said different destinations (D2, D3; Fig. 1, switch 3 serves as multicast contention point to destinations D2, D3 and D1, a minimum ER value amongst the multicast streams going to destinations D2, D3 and D1 is determined based on the slowest stream and that minimum ER value is forwarded in the backward direction to the source S3; col 7 lines 10-15), the method comprising:

identifying a slowest stream of said plurality of streams of the multicast connection at the contention point (col 6 line 58 – col 7 line 15, a minimum ER value identified amongst the multicast flows D2, D3 and D1 which is representative of the slowest stream at the multicast contention point switch 3);

executing an explicit rate (ER) calculation only with respect to accounting characteristics of the slowest stream at the contention point (Fig. 1; col 7 lines 10-15, a ER value is calculated with respect to the slowest stream D2, D3 or D1 at the contention point switch 3);

transmitting a result of the slowest stream ER calculation back to the source (col 7 lines 10-15, The calculated ER value of the slowest stream D2, D3 and D1 is sent back to the source S3 via RM cell); and

controlling a data transmission rate of said source (S3) of said multicast connection using said slowest stream ER calculation (col 7 lines 30-63, data transmission rate is controlled based on the RM cell received at the source carrying the ER value of the slowest stream D2, D3 or D1 via the Switch 3);

Furthermore, Kalampoukas discloses a contention point includes a memory buffer (Figs. 3 & 4 show a buffered switch, col 6 lines 34-45)for storing cells received from the source in a temporally ordered linked list (col 5 lines 25-31); multicasting is effected by copying cells from the linked list to ports associated with the various multicast connection streams (col 4 line 58- col 5 line 2), and a read pointer is maintained for each stream to provide an index into the linked list; and said step of identifying the slowest stream includes identifying the read pointer associated with a temporally earliest cell in the linked list (Fig. 2, col 5 lines 50-63, col 7 lines 30-44, each RM cell has a VC identifier for each connection and thus an read pointer associated with a given cell).

With regards to Applicant's contenion, Examiner respectfully believes the rejection under cited art addresses all issues, however, for completeness, Examiner will address Applicant's primary contention.

Applicant contends Kalampoukas fails to disclose "identifying the slowest stream", Examiner respectfully disagrees, Kalampoukas does disclose identifying the slowest stream, (col 6 line 58 - col 7 line 15), the slowest rate of a given stream is based on the calculated values of ER for each of the flows, the lowest ER value being reflective of the slowest stream. Examiner concurrs that the ER values are calculated for all links as opposed to only the slowest link, however, Examiner believes that the use of "delay" of phases is well known in the art and therefore one could have easily used that technique (see US 2002/0095613) in combination with ER calculations and determine ER value to the slowest link such as a bottleneck link as in Kalampoukas. Thus since determination of slowest link in a network is well known in the arts based on above reasoning as provided, Examiner asserts that this limitation is not allowable and therefore properly rejected under the cited art.